

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

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Case No. A-6067

PETITION OF ROBERT AND JUDITH R. VAN NAMEN

(Hearings held May 4 and June 8, 2005)

OPINION OF THE BOARD

(Effective date of Opinion, July 15, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-1.323(b)(2). The petitioners propose the construction of a second-story addition that requires a variance of 10.90 feet as it is within 9.10 feet of the rear lot line. The required setback is twenty (20) feet.

John Lorenz of Bethesda Architects appeared with Judith Van Namen at the public hearing on June 8, 2005.

The subject property is Lot 33, Block 2, Meadowbrook Village Subdivision, located at 7617 Lynn Drive, Chevy Chase, Maryland, 20815, in the R-60 Zone (Tax Account No. 00567231).

Decision of the Board: Requested variance **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose the construction of a 9.7 x 10.5 foot second-story addition over an existing single-story house.
2. The petitioners testified that their house was built in the 1930s and that the prior owners renovated the house in the 1990s and that the one-story addition was added. The petitioners testified that the prior owners applied for and received a variance for the one-story addition.
3. The petitioners testified that their lot is a corner property located at the intersection of Lynn Drive and Maple Avenue. The petitioners testified that the lot is uniquely shaped, with a truncated property line at its eastern boundary. The petitioners testified that the property is a shallow lot that is 5,250 square feet in size, which is substandard for the R-60 Zone. The property's western boundary is 85 feet in length and its eastern boundary is 65 feet in length and therefore unusually

shallow in comparison to its neighbors. See, Exhibit No. 4(b) [site plan with building restriction line].

4. The petitioners testified that the addition will not expand the existing first floor footprint and that the addition's roof line will be lower than the existing house. See, Exhibit Nos. 5(a) and 5(b) [side/east elevation and rear/south elevation].
5. Following a public hearing on May 4, 2005, the Board granted a 6 foot variance from the required 20-foot rear lot line setback, as the existing house sits 14 feet from the rear lot line. After the public hearing, DPS advised the petitioners that an additional variance of 10.90 feet, required for the proposed construction which would be within 9.2 feet of the rear lot line, had not been advertised. DPS issued a second building permit denial [Exhibit No. 15]. The Board then issued a Notice, dated May 19, 2005, for the second variance, and held an additional public hearing on the 10.90-foot variance for the second-story addition on June 8, 2005.
6. At the public hearing on June 8, 2005, the Board determined that a variance for the existing house was not required in accordance with the Montgomery County Zoning Ordinance. "Section 59-B-5.3 One-family dwelling states: Any one-family dwelling in a residential zone or agricultural zone that was built on a lot legally recorded by deed or subdivision plat before June 1, 1958, is not a nonconforming building."

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variance can be granted. The requested variance complies with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The petitioners' property is a uniquely-shaped, shallow lot. The lot is substandard for the R-60 Zone. The subject property has a property line that is 85 feet in length at its western boundary and property line that is 65 feet in length at its eastern boundary. The proposed second-story addition will not expand the footprint of the existing first floor.

The Board finds that these are exceptional circumstances peculiar to the petitioners' property and that the strict application of the zoning regulations would result in practical difficulties to and an undue hardship upon the property owners.

(b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.

The Board finds that the variance requested for the construction of a second-story addition is the minimum reasonably necessary.

(c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.

The Board finds that the proposed construction will continue the residential use of the property and that the variance will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

(d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.

The Board finds that the roof line of the proposed addition will be lower than the existing house and that the variance will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variance of 9.10 feet from the required twenty (20) foot rear lot line setback for the construction of a second-story addition is granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4(a) and 4(b) and 5(a) and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Louise L. Mayer, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.

Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing Opinion was officially entered in the Opinion Book of the County Board of Appeals this 15th day of July, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.